

MT LEGISLATIVE HISTORY

Chapter 207 19 81

Bill H 99 S _____

Original bill & hist. X C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 1/14 X C

Hearing Date(s) 3/15 X C

EXEC ACTION { 1/16 X C
2/19 X C

EXEC ACTION 3/14 X C

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Date Out _____ C

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Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HOUSE BILL NO. 99

INTRODUCED BY DAILY, HARRINGTON

IN THE HOUSE

January 7, 1981

Introduced and referred to
Committee on Judiciary.

February 20, 1981

Committee recommend bill
do pass as amended. Report
adopted.

February 21, 1981

Bill printed and placed on
members' desks.

Second reading, do pass.

February 23, 1981

Correctly engrossed.

February 24, 1981

Third reading, passed.
Ayes, 75; Noes, 23.
Transmitted to Senate.

IN THE SENATE

March 2, 1981

Introduced and referred to
Committee on Judiciary.

March 16, 1981

Committee recommend bill
be concurred in. Report
adopted.

March 17, 1981

Second reading, concurred in.

March 19, 1981

Third reading, concurred in.
Ayes, 48; Noes, 0.

IN THE HOUSE

March 20, 1981

Returned from Senate.
Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 99
2 INTRODUCED BY Sen. [Signature]
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING DEFERRAL OR
5 SUSPENSION OF IMPOSITION OR EXECUTION OF A SENTENCE OF
6 IMPRISONMENT FOR A DEFENDANT CONVICTED OF A FELONY ON A
7 PRIOR OCCASION; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS
8 46-18-201 AND 46-18-222, MCA."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 46-18-201, MCA, is amended to read:
12 "46-18-201. Sentences that may be imposed. (1) Whenever
13 a person has been found guilty of an offense upon a verdict
14 or a plea of guilty, the court may:
15 (a) defer imposition of sentence, excepting sentences
16 for driving under the influence of alcohol or drugs, for a
17 period not exceeding 1 year for any misdemeanor or for a
18 period not exceeding 3 years for any felony. The sentencing
19 judge may impose upon the defendant any reasonable
20 restrictions or conditions during the period of the deferred
21 imposition. Such reasonable restrictions or conditions may
22 include:
23 (i) jail base release;
24 (ii) jail time not exceeding 90 days;
25 (iii) conditions for probation;

1 (iv) restitution;

2 (v) any other reasonable conditions considered

3 necessary for rehabilitation or for the protection of

4 society; or

5 (vi) any combination of the above;

6 (b) suspend execution of sentence up to the maximum

7 sentence allowed for the particular offense. The sentencing

8 judge may impose on the defendant any reasonable

9 restrictions during the period of suspended sentence. Such

10 reasonable restrictions may include any of those listed in

11 subsections (1)(a)(i) through (1)(a)(vi).

12 (c) impose a fine as provided by law for the offense;

13 (d) commit the defendant to a correctional institution

14 with or without a fine as provided by law for the offense;

15 (e) impose any combination of subsections (1)(b),

16 (1)(c), and (1)(d).

17 (2) If any restrictions or conditions imposed under

18 subsection (1)(a) or (1)(b) are violated, any elapsed time,

19 except jail time, is not a credit against the sentence

20 unless the court orders otherwise.

21 (3) Except as provided in 46-18-222, the imposition or

22 execution of the first 2 years of a sentence of imprisonment

23 imposed under the following sections may not be deferred or

24 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),

25 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)

INTRODUCED BILL
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HB 99

1 and (3), 45-9-102(3), and 45-9-103(2).

2 (4) Except as provided in 46-18-222, the imposition or
3 execution of the first 10 years of a sentence of
4 imprisonment imposed under 45-5-102(2) may not be deferred
5 or suspended.

6 (5) Except as provided in 46-18-222, imposition or
7 execution of a sentence of imprisonment may not be deferred
8 or suspended in the case of a defendant who has been
9 convicted of a felony on a prior occasion, whether or not
10 the sentence was imposed, imposition of the sentence was
11 deferred, or execution of the sentence was suspended."

12 Section 2. Section 46-18-222, MCA, is amended to read:

13 "46-18-222. Exceptions to mandatory minimum sentences
14 and restrictions on deferred imposition and suspended
15 execution of sentence. All mandatory minimum sentences
16 prescribed by the laws of this state and the restrictions on
17 deferred imposition and suspended execution of sentence
18 prescribed by subsections (3), and (4), and (5) of
19 46-18-201, 46-18-221(3), and 46-18-502(2) do not apply if:

20 (1) the defendant was less than 18 years of age at the
21 time of the commission of the offense for which he is to be
22 sentenced;

23 (2) the defendant's mental capacity, at the time of the
24 commission of the offense for which he is to be sentenced,
25 was significantly impaired, although not so impaired as to

1 constitute a defense to the prosecution;

2 (3) the defendant, at the time of the commission of the
3 offense for which he is to be sentenced, was acting under
4 unusual and substantial duress, although not such duress as
5 would constitute a defense to the prosecution;

6 (4) the defendant was an accomplice, the conduct
7 constituting the offense was principally the conduct of
8 another, and the defendant's participation was relatively
9 minor; or

10 (5) where applicable, no serious bodily injury was
11 inflicted on the victim unless a weapon was used in the
12 commission of the offense."

-End-

JUDICIARY COMMITTEE

47 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
99	Prohibiting deferral or suspension of imposition or execution of a sentence of imprisonment for a defendant convicted of a felony on a prior occasion.	1/08/81	Harrington	1/14/81	Tabled 1/16/81 Do Pass as Amended 2/19/81	2/19/81
110	Setting penalties for fraudently obtaining dangerous drugs.	1/08/81	Pavlovich	1/14/81	Do Pass as Amended 1/16/81	1/16/81
130	Providing a remedy for farm implement dealers upon termination of a contract with distributor or manufactor.	1/09/81	Jacobsen	1/15/81	Do Not Pass 1/15/81 (Sent to Business & Industry 1/16)	1/15/81
153	To authorize the Board of county Commissioners to constitute a justice's court in certain cities.	1/10/81	Williams, Keedy, Blaylock, et al	1/15/81	Do Pass 1/15/81	1/15/81
154	To remove statutory provisions granting interests in state land to the federal government.	1/10/81	Brand, Marks	1/15/81	Do Pass 1/20/81	1/20/81
159	To include the burning of property other than occupied structures as an offense of arson	1/12/81	Ellerd	1/21/81	Do Not Pass 1/23/81	1/23/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE

January 14, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 am by Chairman Kerry Keyser, presiding. The following members were absent: Huennekens, Sheldon, and Teague. Rep. Bennett was excused. Jim Lear, attorney of the Legislative Council, was present.

HOUSE BILL 93 REP. BENNETT, chief sponsor of the bill, was excused because of illness. At his request, Mike Meloy, Montana Trial Lawyers, presented the bill to committee members.

MELOY stated this bill amends a section of the law on judgements and damages to change the way interest is computed on judgement. The main reason this bill is being introduced is because of the increase in interest rates over the past several years. MELOY noted it is to the benefit of insurance companies to set money for a claim aside until judgement is passed. The money is then invested to receive the highest amount of interest. MELOY stated from the time of the law suit or claim gets to the insurance company the longer it is to get a settlement. MELOY noted this bill would not change the size of the settlement, but speed up the process.

There were no other proponents.

There were no opponents.

Committee members asked MELOY a few questions to clarify statements..

There was no further discussion on House Bill 93.

HOUSE BILL 99 REP. DAILY, chief sponsor, stated this bill allows a person to receive only one deferment of a sentence for a felony. Presently a person can have a felony conviction removed after the time is served. DAILY noted this bill is only meant for felony offenders and not misdemeanors.

There were no proponents.

There were no opponents.

REP. EUDAILY asked if this bill applied only to felonies within the wording of the bill.

JIM LEAR, Legislative Council, noted the bill applied only to felonies and misdemeanors were not legally mentioned in the bill.

REP. DAILY said he would not mind if this bill was worded into a mandatory bill if it was noted a person is not allowed to have two deferred sentences.

There was no further discussion on House Bill 99.

MINUTES FROM SUB COMMITTEE/JUDICIARY COMMITTEE MEETING

HOUSE BILLS 4, 5, 6, 8, 9, 10, 12, 20, 99, 110

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REP MATSKO seconded that motion.

The Motion was carried unanimously.

HOUSE BILL 6. REP KEEDY moved to have the sub committee reconsider the previous action taken on House Bill 6.

REP IVERSON seconded that motion.

The following amendments were made to House Bill 6:

1. Page 1, line 17
Following: "jurisdiction"
Strike: "and"
Insert: "or"
2. Page 1, line 18
Following: "imposition"
Insert: "of sentence, whether or not executed,"
3. Page 1, line 19
Following: "state, the"
Insert: "County Attorney or"
4. Page 4, line 3.
Following: "disposition"
Strike: "reviewed"
5. Page 4, line 4.
Following: "defendant"
Strike: "the prosecuting attorney, and"
6. Page 4, line 5.
Following: "confined "
Insert: ", and the prosecuting attorney"

REP KEEDY moved to Do Pass House Bill 6 as amended.

REP MATSKO seconded that motion.

The motion was carried unanimously.

HOUSE BILL 8. REP MATSKO moved Do Pass House Bill 8 as amended to include House Bill 4.

REP IVERSON seconded that motion.

HOUSE BILLS 12, 20, 99. REP IVERSON moved to place House Bills 12, 20, 99 in a holding pattern in committee until further action is taken on House Bill 10.

REP KEEDY seconded that motion.

HOUSE BILL 10. House Bill 10 was discussed and amended at great lengths. The amended portions of this bill are in Exhibit 4 of sub committee report.

No further action has been taken on House Bill 10, until the sub committee considers

MINUTES FROM SUB COMMITTEE/JUDICIARY COMMITTEE MEETING

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REP KEEDY moved to amend page 1, line 18 to clarify that "imposition" includes "suspension".

REP IVERSON seconded that motion.

The motion was carried unanimously and given to Jim Lear to draft the necessary revisions.

REP KEEDY moved to amend page 4 lines 4 and 5 to rearrange the sentence structure for clarity.

REP IVERSON seconded that motion.

The motion was carried unanimously and was given to Jim Lear for the necessary revisions.

CHAIRMAN EUDAILLY requested Jim Lear to draft the adopted amendments to House Bill 6 for the executive committee to consider.

HOUSE BILL 9. The hearing on House Bill 9 raised the question of the usage of the word "walls" in pertaining to confinement areas of the prison. It was stated there are no "walls" surrounding any of the prison areas. It was decided that other language would be necessary to insert in place of "walls" to show confinement areas.

CURT CHISHOLM, Deputy Director of Department of Institutions, and DAN RUSSELL, Administrator of Division of Corrections, were asked what terminology could be used in place of "walls." They stated, the term, "perimeter security fence" could be used in reference to the maximum security areas. However, there are some areas that are not security areas that need to be defined.

REP IVERSON moved that the committee delay action on House Bill 9 until the correct language to be used is supplied to Jim Lear by Mr. Chisholm and Mr. Russell.

REP KEEDY seconded that motion.

The motion was carried unaimously, and the amendments were given to Jim Lear for revisions.

HOUSE BILL 12. REP KEEDY noted that this bill is covered by House Bill 10, if House Bill 10 is passed. REP KEEDY moved that the committee hold off action on this bill until a later date.

REP IVERSON seconded this motion.

The motion was carried unanimously.

HOUSE BILL 20. REP KEEDY observed that this bill is covered by House Bill 10, if passed. REP KEEDY moved that the committee delay action on this bill until a later date.

REP IVERSON seconded that motion.

The motion was carried unanimously.

HOUSE BILL 99. REP KEEDY noted that this bill is covered by House Bill 10, if

MINUTES FROM SUB COMMITTEE/JUDICIARY COMMITTEE MEETING
HOUSE BILLS 4, 5, 6, 8, 9, 10, 12, 20, 99, 110
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passed. REP KEEDY moved that committee delay action on this bill until a later date.

REP IVERSON seconded that motion.

The motion was carried unanimously.

Jim Lear, Legal Counsel, suggested that REP GOULD, and REP DAILLY, sponsors of House Bills 12, 20, and 99, be contacted for discussion with him for their reactions to the proposals on their bills.

The committee unanimously agreed with Jim Lear's suggestion.

HOUSE BILL 10. REP KEEDY moved to amend page 5 line 14, to clarify that if a more susceptible person is the victim unpurposely it is not an aggravating circumstance.

REP MATSKO seconded that motion.

REP KEEDY moved to include criminal sale of dangerous drugs and criminal possession with intent to sell, contained in sections 45-9-101 and 45-9-103 with certain mandatory sentences added.

REP MATSKO seconded that motion.

REP KEEDY moved to amend Page 19, lines 11 and 12 to provide a more lenient sentence if the reason for lack of consent was age as provided in section 45-5-501 (2) (C).

REP IVERSON seconded that motion.

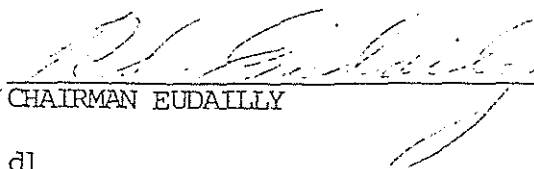
The motion was carried unanimously and given to Jim Lear for revision.

REP MATSKO moved to amend page 2, lines 12 and 13 to clarify that a person who has been convicted for a misdemeanor or felony is not eligible for deferral if he has been convicted of a prior felony.

REP KEEDY seconded that motion.

The motion was carried unanimously and given to Jim Lear for revisions.

The meeting was adjourned at 11:10 am by CHAIRMAN EUDAILLY.



CHAIRMAN EUDAILLY

dl

REP. EUDAILY asked who certifies the alcohol counselors. The Department of Institutions will in the budget year of 81-82.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 8:45 a.m.

HOUSE BILL 12 REP. KEEDY moved do pass. The problem with the existing statute is additional sentencing does not run consecutively. REP. KEEDY offered an amendment to require judges to make the sentences run consecutively. The amendment passed unanimously.

REP. EUDAILY felt judges should distinguish between dangerous and nondangerous crimes. REP. KEEDY moved to reconsider the amendment. All were in favor of the motion. After a brief discussion the amendment passed with SHELDEN, HUENNEKENS, YARDLEY, EUDAILY and ABRAMS voting no.

REP. KEEDY moved to amend less than five years have elapsed between the commitment of the present offense and either confinement or the language in 501. After a brief discussion REP. KEEDY changed his amendment to read "and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction". The amendment passed.

REP. HANNAH moved do pass as amended. A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, BENNETT, CONN, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, and KEEDY. Those voting no were: EUDAILY, DAILY, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE and YARDLEY. The bill passed as amended 10 to 7.

HOUSE BILL 20 REP. MCLANE moved do pass.

REP. IVERSON moved following "CONSECUTIVELY" strike "WITH" and insert "TO" in the title and on page 2, line 20. The motion passed unanimously.

REP. MATSKO moved do pass as amended. The motion carried with REP. YARDLEY voting no.

HOUSE BILL 99 REP. DAILY moved do pass.

REP. DAILY moved to amend the bill on page 3, line 6 striking "or execution" and on line 7, and to strike "of imprisonment" on line 7 in the title and throughout the bill. The amendment carried.

REP. DAILY moved do pass as amended. The bill passed with SHELDEN, YARDLEY and HUENNEKENS voting no.

HOUSE BILL 284 REP. BROWN moved do pass.

REP. BROWN moved to adopt the amendments as given to the committee earlier. REP. BROWN moved to strike on the amendments (2)(b); and to strike chapter 23, part 2 on the last two lines of the bill where it appears the second time. The amendment carried.

REP. BROWN moved do pass as amended. The motion carried.

HOUSE BILL 361 REP. HUENNEKENS moved do not pass.

REP. CURTISS made a substitute motion to table the bill. The substitute motion carried.

HOUSE BILL 364 REP. BROWN moved do not pass.

REP. CONN made a substitute motion of do pass. REP. CONN offered the amendments as in EXHIBIT 2. The amendment passed with IVERSON, BROWN, DAILY, BENNETT, TEAGUE and HUENNEKENS voting no.

REP. HANNAH moved to strike "not less than" and to strike "or more than one day" and to insert "in the county jail" on the amendment. The motion carried.

REP. HANNAH moved do pass as amended. The bill passed.

HOUSE BILL 595 REP. HUENNEKENS moved do not pass. He stated we cannot ignore the fact that we may lose federal funds.

REP. IVERSON made a substitute motion of do pass. REP. MCLANE seconded the motion. REP. IVERSON stated people don't function well at 55 mph.

REP. CONN stated the legislature should have respect for the federal laws. If the Reagan administration sees fit then we should abide by their rulings.

REP. HANNAH moved on page 2, line 13 to insert "in state" and strike the rest of the line.

REP. EUDAILY made a substitute motion to adopt the amendments as proposed by REP. SIVERTSEN in his testimony. The substitute motion carried.

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

<u>HOUSE</u> BILL NO.	<u>ENTERED</u> COMM.	<u>DATE</u> CONSIDERED	<u>OUT OF</u> COMM.	<u>DO PASS</u> <u>DATE</u>	<u>DO NOT</u> <u>PASS</u> <u>DATE</u>	<u>DO PASS</u> AS AMEND. <u>DATE</u>	<u>BE CON-</u> <u>CURRED IN</u> <u>DATE</u>	<u>BE CONC. IN</u> AS AMENDED <u>DATE</u>	<u>BE NOT CON-</u> <u>CURRED IN</u> <u>DATE</u>
HB 5	2/18/81	3/06/81	3/21/81					3/21/81	
HB 6	1/22/81	3/09/81	3/14/81					3/14/81	
HB 8	1/22/81	3/09/81	3/24/81						3/24/81
HB 9	1/22/81	3/09/81	3/09/81					3/09/81	
HB 10	1/27/81	2/10/81	tabled						
HB 12	3/02/81	3/09/81	3/24/81				3/24/81		
HB 20	3/02/81	3/09/81	3/09/81				3/09/81		
HB 52	1/20/81	2/03/81	2/03/81					2/03/81	
HB 66	1/20/81	2/03/81	3/24/81				3/24/81		
HB 93	1/22/81	3/11/81	3/14/81						3/14/81
HB 96	2/07/81	3/11/81	3/14/81					3/14/81	
HB 99	3/02/81	3/13/81	3/14/81				3/14/81		
HB 110	1/23/81	3/12/81	3/14/81					3/14/81	
HB 138	2/18/81	3/03/81	3/03/81				3/03/81		
HB 138	3/04/81	3/21/81	3/21/81	tabled					
HB 153	1/23/81	3/03/81	3/03/81				3/03/81		

Use a separate sheet for Senate, House Bills, and Resolutions.

beyond the original bill. He added that the Supreme Court has found against a limitation such as the one proposed in this bill, referring to the case of Chaffee v. USF&G, where the Supreme Court decided that it would be against public policy and would result in a windfall for the companies to permit them to collect premiums for the uninsured cars and then to pay on only one of the limits.

Senator Mazurek asked if there were three vehicles involved in a massive collision, under 100/300 coverage, under this bill what would the limit of coverage be? Pat Melby said \$100,000 on each vehicle in each accident, for a total of \$900,000. Tom Harrison said that he thought under this bill it would be a total of \$300,000.

CONSIDERATION OF HOUSE BILL 99:

PROHIBITING DEFERRAL OF IMPOSITION
OF SENTENCE IN A FELONY CASE FOR A
DEFENDANT CONVICTED OF A FELONY ON
A PRIOR OCCASION.

Rep. Daily presented the bill and said that its purpose is to prevent a judge from issuing a second deferred sentence to any individual with a prior felony conviction.

Curt Chisholm, of the Department of Institutions, commented that the bill as currently worded would have virtually no impact on the prison population.

Senator Crippen voiced concern because the degree of seriousness of a felony involved is not defined more clearly.

Rep. Daily agreed that this was somewhat of a problem with him as well, but said that the bill's intention is to discourage crime and to protect the general public. He pointed out that a suspended sentence could be issued in place of a second deferred sentence, and would stay on the person's record.

Senator Mazurek established from Mr. Meloy that deferred sentences are never expunged from the NCIC records.

Karen Mikota, representing the League of Women Voters, said that the meaning of "convicted" may be affected through this bill, and that would affect having deferred sentences on a person's record.

In closing, Rep. Daily said that a judge legally cannot use first felony convictions in sentencing a person on his second felony conviction.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 14, 1981

The forty-third meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF HOUSE BILL 110:

Senator Halligan moved to amend the bill on line 25, following "term of" by inserting "not less than", and following "5 years" by inserting "or not more than 10 years". His motion passed unanimously. Senator O'Hara moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 99:

Senator O'Hara moved that the bill BE CONCURRED IN, and his motion passed over the objection of Senators Halligan and Mazurek.

DISPOSITION OF HOUSE BILL 213:

Senator Mazurek moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 154:

Senator Halligan moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 96:

Senator O'Hara moved that the bill be amended on page 1, line 23, following "property", by inserting "for less than fair market value", and his motion passed unanimously. Senator O'Hara then moved that it BE CONCURRED IN AS AMENDED, and his motion passed over the objection of Senator Olson.

DISPOSITION OF HOUSE BILL 534:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

STANDING COMMITTEE REPORT

March 14, 1931

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 99
DAILY (O'HARA)

Respectfully report as follows: That HOUSE Bill No. 99

~~DO PASS~~
BE CONCURRED IN

PA.